

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MAX J. AYERS**

Claimant

VS.

**BRACKETT, INC.**

Respondent

AND

**AMERICAN HOME ASSURANCE CO.**

Insurance Carrier

Docket No. 1,000,987

**ORDER**

Respondent and its insurance carrier request review of the October 10, 2003 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

The Administrative Law Judge (ALJ) authorized Dr. David Blakely to prescribe and monitor medication for claimant's depression. The Judge also determined that Dr. Melvin Berg had referred claimant to Dr. Blakely. And the Judge ordered certain unpaid medical bills to be paid by respondent.

The respondent requests review and argues that claimant's traumatic neurosis did not arise out of and in the course of employment. In its brief, respondent first argues that claimant failed to prove his psychological problems are directly traceable to his physical work-related injuries. Respondent next argues the order requiring payment of medical bills exceeds the jurisdiction of the Judge because there has not been a determination that the treatment was reasonable and necessary or that, in the alternative, the Judge exceeded his jurisdiction by, in effect, ordering respondent to pay in excess of \$500 in unauthorized medical expenses. Although raised in its application for review, the respondent in its brief has withdrawn the issue of whether the Judge can order additional medical benefits after a regular hearing has been held.

Conversely, the claimant argues the appeal be dismissed because the Board does not have jurisdiction, or in the alternative requests the Board to affirm the ALJ's Order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Initially, the Board must address whether it has jurisdiction to review the ALJ's Order. The issue of whether the claimant's alleged psychological problems are directly traceable to claimant's physical right upper extremity injury was determined in a November 26, 2002 Board Order issued in this case. The Board concluded in pertinent part:

Here, the dispute arises as to whether claimant's alleged psychological problems are directly traceable to his physical right upper extremity injury.<sup>1</sup> The Board concludes, as it has on numerous other occasions, that the issue here is the nature and extent of the injury as opposed to the compensability issue which would grant the Board jurisdiction to review the preliminary hearing Order.<sup>2</sup> Therefore, the Board finds it does not have jurisdiction, at this juncture of the proceeding, to review the nature and extent of injury issue of whether claimant's psychological problems are directly traceable to claimant's work-related physical right upper extremity injury.

The Board again concludes that it does not have jurisdiction to review the nature and extent of injury issue of whether claimant's psychological problems are directly traceable to claimant's work-related physical right upper extremity injury.

Respondent next argues the ALJ did not have jurisdiction to order respondent to pay certain medical bills.

The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?<sup>3</sup>

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<sup>1</sup> See *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, Syl. ¶ 1, 771 P.2d 557, rev. denied 245 Kan. 784 (1989).

<sup>2</sup> See *Anno-Pfortmiller v. Delta Design*, No. 196,588, 1996 WL 670506 (Kan. WCAB Oct. 25, 1996).

<sup>3</sup> K.S.A. 44-534a(a)(2).

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.<sup>4</sup> Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.<sup>5</sup>

K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment and the payment of medical compensation. The preliminary hearing statute found at K.S.A. 44-534a gives the ALJ authority to grant or deny the request for medical compensation pending a full hearing on the claim. Thus, the ALJ did not exceed his jurisdiction and the Board does not have jurisdiction to review the Judge's preliminary findings regarding medical compensation.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>6</sup>

**WHEREFORE**, the Board dismisses the appeal, leaving the October 10, 2003 Order of Administrative Law Judge Brad E. Avery in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December 2003.

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BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant  
Matthew S. Crowley, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge  
Anne Hought, Acting Workers Compensation Director

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<sup>4</sup> K.S.A. 44-551.

<sup>5</sup> See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

<sup>6</sup> K.S.A. 44-534a(a)(2).